

## STATUTES

Made at WESTMINSTER, Anno 2 HEN. IV. and A. D. 1400.

## CAP. VII.

In what case the Plaintiff shall not be nonsuit if the Verdict pass against him.

*Item*, Whereas upon Verdict found before any Justice in Assise of *Novel Disseisin*, *Mortdauncester*, or any other Action whatsoever, the Parties before this time have been adjourned upon difficulty in Law upon the matter so found; (2) it is ordained and established, that if the Verdict pass against the Plaintiff, that the same Plaintiff shall not be nonsuited.

Itempor ce qe sur veredit trove devaunt quelconque justice en assise de Novel disseisine Mort dauncestre ou autre accion quelconque les parties devaunt ces heures ont este adjournez sur difficulte en loye sur la matire issint trovez ordeignez est & establiz qe si le dit veredit passe encontre le pleintif qe mesme le pleintif ne soit nounsuy.

**206** \*Br. Nonsuit, 6. Fitz. Nonsuit, 6, 12, 13, 15. 1 Inst. 139 b.

At the common law upon every continuance or day given over *before judgment*, the plaintiff might have been nonsuited; and consequently, before this Statute, after verdict given, if the Court gave a day to be advised, the plaintiff was then demandable and might therefore have been nonsuited, Co. Litt. 139 b. See the subject excellently explained in 1 Wms. Saund. 195 d. n. i. to Mounson v. Redshaw. It may be observed that motions to nonsuit the plaintiff do not prevail in our practice, Graham v. Harris, 5 G. & J. 497; Kettlewell v. Peters, 23 Md. 312.<sup>1</sup>

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<sup>1</sup>A non suit must be the voluntary act of the plaintiff. Kettlewell v. Peters, *supra*. His right to suffer a *non suit* is a valuable one, for the protection of which the plaintiff must be called before the verdict is delivered. Hall v. Schuchardt, 34 Md. 15; First Bank v. National Bank, 39 Md. 600; 92 U. S. 122; Ferrall v. Farnen, 67 Md. 83; Andrews v. Central Bank, 77 Md. 29. Cf. Bolton Co. v. Stokes, 82 Md. 50.

As to judgment of *non pros.* where plaintiff is in default in filing some pleading when under rule to do so, see Marsh v. Johns, 49 Md. 569; Rut-